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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,787	11/07/2000	Benoit Laflamme		4281

28291 7590 09/19/2005

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EXAMINER

MASINICK, MICHAEL D

ART UNIT PAPER NUMBER

2125

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/709,787	<b>Applicant(s)</b> LAFLAMME ET AL.	
	<b>Examiner</b> Michael D. Masinick	<b>Art Unit</b> 2125	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 155, 158-172, 180-183, 185-187 and 190-219 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 155, 158-172, 180-183, 185-187 and 190-219 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: <u>9/10/2005</u>                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Claims 155, 158-172, 180-183, 185-187 and 190-219 are pending in this application.

Claims 200-219 are new. Claims 155, 158-172, 180-183, 185-187 and 190-199 are amended.

This office action is in response to the RCE filed 8/19/2005.

2. An interview was conducted with Brigide Mattar on September 12, 2005 where all independent claims were discussed. Applicant's description of the amended claims and their relation to the art previously used was discussed. Examiner informed applicant that a new search would be conducted in view of the amendments presented in the RCE and discussed in the interview. Examiner thanks Applicant for initiating the telephone interview in order to speed prosecution in this case.

3. In a later telephone conversation it was noted by the Examiner that the specification as originally filed may not contain support for some claims. Applicant responded noting pages 9 and 10 of the specification as well as Figures 3 (a and b) as well as Figure 8. These notations have been reviewed, but examiner maintains that there is a lack of support in the original disclosure for "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller" as well as receiving a "record of errors" via the same interface. See rejection below for a more specific explanation.

### ***Response to Arguments***

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4. Applicant's arguments with respect to claims 155, 158-172, 180-183, 185-187 and 190-199 have been considered but are moot in view of the new ground(s) of rejection.

5. Examiner notes that while all independent claims are directed to a "spa control system", there are no claim elements which actually set forth the control of a spa. Functionally the claimed "spa control system" is a generic control system for downloading software components from a remote computer to an individual controller through an interface signal converter.

#### *Claim Objections*

6. Claim 163 is objected to because of the following informalities: This claim should be dependant on claim 162, not 155. The term "said at least two different types" has an antecedent problem. Appropriate correction is required.

7. The preamble to claim 216 is confusing as it is currently written. It is unclear whether applicant is attempting to claim a computer program or the apparatus on which the program runs. If the applicant is seeking protection for a computer program, the claim must not reference a memory unit and processor as these are not elements of a computer program. Only the means provided by the computer program should be listed.

#### *Claim Rejections - 35 USC § 112*

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 155, 158-172, 180-183, 185, 186, 187, 190-219 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

10. Referring to independent claims 155, 186, 200, and 216, there is a lack of support in the original disclosure for "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller." As noted above, applicant cited in a telephone conversation with the examiner, pages 9 and 10, and figures 3 and 8 as support for this claim element. Examiner finds no support on in figure 3 for this feature. Figure 8 shows button 153 which is labeled "send new software to spa...". Likewise, the description of this feature on page 9 states "In block 152, the dealer can monitor the current software installed in spa controller 53. If there is a software update, the dealer can download this info by clicking on button 153." "This info" is a vague term that could mean downloading the information about whether there IS an update to the spa controller or downloading the software version number. While it is possible that the downloading of a software component through the communication link to the spa controller was the intended purpose of these statements in the specification, it is certainly not clear.

11. Claim 167 uses the phrase "said spa controller includes a body" and the interface signal converter is integrated into the body of the spa controller. This language is not used in any way in the specification and changes the original meaning as written. The specification has support

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for “rigidly attached” and “connected to”, however, “integrated into the body” of is not supported. This claim is treated in the rejection below as if it had used on of the above terms.

12. Referring to independent claim 187, and 190-194, there is a lack of support in the original disclosure for “receiving data comprising a record of errors from said spa controller”. Page 9 of the specification shows the dealer having the ability to monitor errors and to view the number of times an error has occurred (this is reiterated in Figure 8). However, there is no showing of the actual data transfer of a “record of errors” as claimed. The errors are transferred, but could be transferred one by one on a real-time basis or in any number of different ways.

13. Claims 155, 158-172, 180-183, 185, 186, 195-219 are further rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As noted above, the specification is vague with regard to the downloading of a software component through the communication link to the spa controller. While it could be argued that the specification does show this feature, it is clear that there is no defining verbiage to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use this claim element of the invention.

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14. Claims 187, 190-194 are further rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As noted above, these claims contain subject matter that is merely alluded to in the specification with no specific examples or instructions for one of ordinary skill.

#### **Claim Rejections - 35 USC § 102/103**

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

16. Claims 155, 160-163, 168-172, 180-183, 185, 186, 195-200, 203-206 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent Publication 2001/0034754 to Elwahab et al. If applicant contends that the rejected claims are indeed claiming specific spa control rather than a generic controller as viewed by the examiner, this rejection should be viewed as a USC 103 rejection in view of Bassett as shown below with reference to claims 187 and 190-194.

17. Referring to claims 155, 186, 195, and 198, Elwahab shows a spa control system comprising: a spa controller (see examiner's note below), an interface signal converter

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(Paragraph 0006 – “Devices which use different protocols... can be connected to the system via a converter”)), in communication with said spa controller, said interface being operative for: establishing a communication link with a remote computer (Paragraph 0012); receiving communication signals conveying software components over the communications link (Paragraph 0072), said software components comprising updates to software already installed on said spa controller; communicating said software components to said spa controller (Paragraph 0072); wherein said interface signal converter converts communication signals received from the remote computer via said communications link and directs the converted signals to the spa controller, and wherein said interface signal converter converts signals from the spa controller to be communicated to said remote computer via said communications link (Examiner notes that these last two phrases are the purpose of a converter as cited above).

18. Examiner notes that while all independent claims are directed to a “spa control system”, there are no claim elements which actually set forth the control of a spa. Functionally the claimed “spa control system” is a generic control system for downloading software components from a remote computer to an individual controller through an interface signal converter. Furthermore, Elwahab is a device, system, and method for providing remote access to standard appliances. A spa is a well known home appliance which has been historically controlled from remote locations (see previous rejections using Bassett or previously cited patent to Smith et al).

19. Referring specifically to independent claim 195, Elwahab shows all elements of this claim as related to claim 155 and additionally shows wherein the remote computer is a hand-portable remote computer (paragraph 0025).



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20. Referring to independent claim 200, Elwahab shows all claim elements as cited in relation to claim 155.

21. Referring to independent claim 216, Elwahab shows all claim elements as cited in relation to claim 155. Examiner further notes that all computers inherently contain a memory and a processor.

22. Referring to claims 160-163, and 203-206 Elwahab shows where the interface signal converter comprises an IR or RF transceiver and is capable of transceiving at least two different types of signals. Examiner notes that this system is capable of running on the CEBus system (Paragraph 0006) and would inherently be able to transceive all communications available on such a system.

23. Referring to claims 168 and 210, Elwahab shows wherein said interface signal converter is adapted for establishing a communications link with a remote computer of a wire-line (Paragraph 0006 – “x10”).

24. Referring to claims 169, 211, and 219 Elwahab shows wherein said communications link is a wireless communications link (Paragraph 0025 - RF).

25. Referring to claim 170-172 and 212-213, Elwahab shows wherein said interface signal converter is adapted for establishing a communications link with a remote computer through a computer network (Paragraph 0025 - internet).

26. Referring to claim 180, Elwahab shows wherein said computer network is a LAN (Paragraph 0025 - intranet).

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27. Referring to claim 181, 182, 196, 197, 199, 214, 215, 217 and 218, Elwahab shows wherein said remote computer is a PDA or cellular phone (Paragraph 0025 – Handheld computing devices). Examiner notes that “Palm Pilot” is a Trademarked product name and needs to be denoted as such.

28. Referring to claim 183, the location of the system does not change the physical nature and connections of the system itself.

29. Referring to claim 185, Elwahab shows wherein said remote computer is used to monitor and control the spa. This is the purpose of the Elwahab publication as noted above.

***Claim Rejections - 35 USC § 103***

30. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

31. Claims 158, 159, 168, 169, 190, 201, and 202 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication 2001/0034754 to Elwahab in view of U.S. Patent No. 5,877,957 to Bennett.

32. Elwahab does not specifically show the use of a RS-485 transceiver in the interface signal converter alone or as one of two different types of communications.

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33. Bennett shows an appliance control system in a home automation environment. In Column 20, lines 1-9, Bennett shows that in addition to CEBus, X-10, and other home automation protocols, RS-485 may also be used. This also shows that the connection could be a wired or wireless connection as required by the system designer.

It would have been obvious to one of ordinary skill in the art at the time of invention to use a RS-485 transceiver as a communications transceiver of Elwahab because it is another commonly used protocol in the computer networking industry as shown by Bennett and can be used in the CEBus system as shown above.

34. Claims 164-167, 207-209 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication 2001/0034754 to Elwahab in view of U.S. Patent No. 6,459,959 to Williams et al.

35. Elwahab does not specifically show that the interface signal converter can be removable, secured, or fits into a cavity.

36. Williams shows an irrigation system with removable station modules for watering. Because of the damp conditions, these modules may be attached with screws as shown in figure 4, or a removable bracket as shown in figure 5. Figure 7 shows a cavity where the controller module would be placed.

37. It would have been obvious to one of ordinary skill in the art at the time of invention to use the removable modules and cavity of Williams in the desired spa control system of Elwahab because they share the same problem of dampness and wet conditions. It would have been

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obvious to one looking to solve this problem to look in any art where large amounts of water are involved.

38. Claims 187 and 190-194 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication 2001/0034754 to Elwahab et al in view of U.S. Patent No. 5,706,191 to Bassett et al.

39. With regard to what has been shown above, Elwahab does not show that the data transferred from the spa controller to the remote computer is a "record of errors".

40. Bassett shows an automated residence system similar to that of Elwahab in that it uses the CEBus and other common protocols to communicate with household appliances (including a spa). Bassett shows the transfer of a "record of errors" from the appliance controller ("AIMs") to the central controller.

41. Bassett notes in paragraph 10, "It also would be desirable to provide for the connection between various appliances in a home, which would also permit various diagnostic and analysis functions to be conducted, and communicated to a user/operator, so as to be able, for example, to inform the user/operator of an actual or anticipated failure in a component, or to inform the user of past performance or power consumption, and even possibly make projections of expected performance."

42. It would have been obvious to one of ordinary skill in the art to use the transmission of "actual or anticipated failure" information of Bassett in the system of Elwahab because the ability to diagnose failures leads to a quick correction of problems. Bassett and Elwahab are

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analogous art as they both use CEBus to communicate and could be used together in a control environment.

43. Claims 190-193 are rejected using the same citations as claims 169, 182, 167, and 160.

44. Referring to claim 194, Bassett shows wherein said record of errors comprises the number of times an error has occurred ("past performance" – Column 2, line 19). Examiner further notes that there is no support for this claim element in the original specification. Figure 8 shows a record of errors, but there is no support for that record being transmitted or that the record contains a number of times an error has occurred.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael D. Masinick whose telephone number is (571) 272-3746. The examiner can normally be reached on Mon-Fri, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael D Masinick  
Examiner  
Art Unit 2125

MDM, September 13, 2005